



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

Ms. Celamaine Cunniff
Regional Attorney
Texas Department of Protective and
Regulatory Services
P.O. Box 4300
Tyler, Texas 75712

OR96-1310

Dear Ms. Cunniff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33821.

The Texas Department of Protective and Regulatory Services (the "department") received a request for the case record concerning the requestor's child. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.¹

Section 261.201 of the Family Code provides that, except as otherwise provided by that section, the files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 or in providing services as a result of an investigation are confidential and not subject to release under chapter 552 of the

¹Chapter 552 of the Government Code imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that the information is made confidential by another source of law or affects third party interests). The request was apparently received on April 7, 1995, but the department did not ask this office for a ruling until May 19, 1995. However, as a statute applies in this instance, we find that a compelling reason exists as to why the information should not be made public. Therefore, we address your claimed exceptions to disclosure.

Government Code. Fam. Code § 261.201(a)(2). Subsection (f) of section 261.201 provides:

(f) Notwithstanding Subsection (b), the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Subsection (b), which is not applicable here, describes the conditions when a court may order the disclosure of information made confidential by subsection (a). Subsection (f) appears to require the department to provide certain parties, including a parent of the child who is the subject of a child abuse investigation, the information made confidential by subsection (a), with certain redactions. As the requestor here is a parent of the child involved in the investigation, we must consider whether the department must release the requested information to the requestor pursuant to subsection (f). However, because the department's release of the information pursuant to subsection (f) is "subject to department rule," we must first consider whether the department's rules provide for the disclosure of the requested information to the requestor.

Section 700.102 of title 40 of the Texas Administrative Code states that:

Information about a child protective services client is confidential and may not be released except as authorized by statute, federal regulation, court direction, attorney general's opinion, and the [department's] rules concerning disclosure of information and confidentiality of information in Chapter 734 of this title (relating to Public Information).

Section 700.102 directs us to consider other department rules concerning the disclosure of client information. Section 700.103 of title 40 of the Texas Administrative Code provides:

A child protective services client may review all information in the client's case record except the identity of the complainant, *information exempted from disclosure under the Open Records Act*, and information exempted under other state laws.

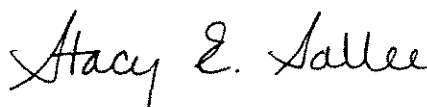
40 T.A.C. § 700.103 (emphasis added). This rule permits a "client" to review that client's case record, with the exception of the complainant's identity. *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions). We assume that the requestor, a parent of the alleged victim, is a client for purposes of section 700.103. This regulation makes an exception to a client's right to review information in the client's case record for information "exempted from disclosure under

the Open Records Act.” We now proceed to consider whether the information is exempted from disclosure under the Open Records Act.

Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). You assert that section 552.108 applies to the requested information because it relates to a pending criminal prosecution. You state that the Rusk County District Attorney (the “district attorney”) is conducting a criminal investigation into this case. You also inform us that the district attorney has requested that the department withhold the requested documents, and you have submitted a letter from Mr. Kyle Freeman, County and District Attorney, in which Mr. Freeman requests that the department withhold the requested information because “[t]his case is currently under official investigation by this department.” Mr. Freeman also states that the release of the requested records could hinder the investigation or prosecution of the case. This office has previously held that any proper custodian of records can claim the section 552.108 exception while an incident involving allegedly criminal conduct is still under active investigation. Open Records Decision Nos. 474 (1987), 372 (1983). Accordingly, you may withhold the requested information under section 552.108 of the Government Code.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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Ref.: ID# 33821

Enclosures: Submitted documents

²We note that there may be a conflict between the provisions of section 261.201(f) and the department’s current regulations, as section 261.201(f) appears to be a parental access provision while the department’s regulations permit the department to withhold information from the parent. We are confident that this apparent conflict will soon be resolved by the department’s enactment of new regulations.